



# Wildlife and Natural Environment (Scotland) Act 2011

2011 asp 6

## PART 2

### WILDLIFE UNDER THE 1981 ACT

#### *Non-native species etc.*

#### **14 Non-native species etc.**

- (1) The 1981 Act is amended as follows.
- (2) In section 14 (introduction of new species etc.)—
  - (a) for subsections (1) to (2) substitute—
    - “(1) Subject to the provisions of this Part, any person who—
      - (a) releases, or allows to escape from captivity, any animal—
        - (i) to a place outwith its native range; or
        - (ii) of a type the Scottish Ministers, by order, specify; or
      - (b) otherwise causes any animal outwith the control of any person to be at a place outwith its native range,is guilty of an offence.
    - (2) Subject to the provisions of this Part, any person who plants, or otherwise causes to grow, any plant in the wild at a place outwith its native range is guilty of an offence.
    - (2A) Subsection (1) does not apply to the following animals where those animals are released or allowed to escape from captivity for the purpose of being subsequently killed by shooting—
      - (a) common pheasant;
      - (b) red-legged partridge.
    - (2B) The Scottish Ministers may, by order, specify—

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- (a) other types of animals to which subsection (1)(a)(i) or (1)(b) does not apply; and
  - (b) types of plants to which subsection (2) does not apply.
- (2C) The Scottish Ministers may, by order, disapply subsection (1) or (2) in relation to—
- (a) any person specified in the order;
  - (b) any conduct undertaken for the purposes of any enactment (including any enactment contained in or made under an Act of the Scottish Parliament) so specified; or
  - (c) any conduct authorised by, under or in pursuance of any such enactment.
- (2D) An order under subsection (1)(a)(ii), (2B) or (2C) may make different provision for different cases and, in particular, for—
- (a) different types of animal or plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.”,
- (b) in subsection (3), for “prove” substitute “ show ”,
  - (c) subsections (5) and (6) are repealed.
- (3) After section 14ZB (codes of practice in connection with invasive non-native species: England and Wales) insert—

**“14ZC Prohibition on keeping etc. of invasive animals or plants**

- (1) Subject to the provisions of this Part, any person who keeps, has in the person's possession, or has under the person's control—
  - (a) any invasive animal of a type which the Scottish Ministers, by order, specify; or
  - (b) any invasive plant of a type so specified,
 is guilty of an offence.
- (2) An order under subsection (1) may make different provision for different cases and, in particular, for—
  - (a) different types of invasive animal or invasive plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.
- (3) Subject to subsection (4), it is a defence to a charge of committing an offence under subsection (1) to show that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.
- (4) Where the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the act or omission of another person, the person charged must not, without leave of the court, be entitled to rely on the defence unless, within a period ending 7 days before the hearing,

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the person has served on the prosecutor a notice giving such information or assisting in the identification of the other person as was then in the person's possession.

- (5) The Scottish Ministers may, in an order under subsection (1), make provision for or in connection with the compensation of persons who, at the time of the coming into force of the order, may no longer keep, have in their possession or have under their control, an animal or plant.”
- (4) In section 14A (prohibition on sale etc. of certain animals or plants)—
- (a) in the title, for “certain” substitute “invasive”;
  - (b) for subsection (1) substitute—
    - “(1) This section applies to—
      - (a) any type of invasive animal; or
      - (b) any type of invasive plant,    - the Scottish Ministers, by order, specify.”;
  - (c) for subsection (3) substitute—
    - “(3) An order under subsection (1) may make different provision for different cases and, in particular, for—
      - (a) different types of invasive animal or invasive plant;
      - (b) different circumstances or purposes;
      - (c) different persons;
      - (d) different times of the year; and
      - (e) different areas or places.”.
- (5) For section 14B (guidance: non-native species) substitute—

**“14B Notification of presence of invasive animals or plants etc.**

- (1) The Scottish Ministers may, by order, make provision about the notification of the presence of—
- (a) invasive animals; or
  - (b) invasive plants,
- at any specified place outwith their native range where persons are, or become, aware of the presence of such animals or plants.
- (2) An order under subsection (1) may make provision for, or in connection with—
- (a) the persons (or types of persons) who must make a notification;
  - (b) the circumstances in which a notification must be made;
  - (c) the times of the year when a notification must be made;
  - (d) the persons to whom a notification must be made;
  - (e) the form and method of any notification; and
  - (f) the period within which any notification must be made.
- (3) An order under subsection (1) may require a person (or type of person) to make a notification only if the Scottish Ministers consider that the person (or that type of person) has or should have knowledge of, or is likely to encounter, the invasive animal or invasive plant to which the order relates.

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- (4) An order under subsection (1) may make different provision for different cases and, in particular, for—
- (a) different types of invasive animal or invasive plant;
  - (b) different circumstances or purposes;
  - (c) different persons;
  - (d) different times of the year; and
  - (e) different areas or places.
- (5) A person who, without reasonable excuse, fails to make a notification in accordance with the requirements of an order made under subsection (1) is guilty of an offence.”.

#### **Commencement Information**

- I1** S. 14(1)(2)(b)(c)(4) in force at 2.7.2012 by S.S.I. 2012/175, **art. 2(a)**
- I2** S. 14(2)(a) in force at 1.5.2012 for specified purposes by S.S.I. 2012/116, **art. 2(a)(i)**
- I3** S. 14(2)(a)(3)(5) in force at 2.7.2012 in so far as not already in force by S.S.I. 2012/175, **art. 2(a)** (with **art. 3(3)**)
- I4** S. 14(3) in force at 1.5.2012 for specified purposes by S.S.I. 2012/116, **art. 2(a)(ii)**
- I5** S. 14(5) in force at 1.5.2012 for specified purposes by S.S.I. 2012/116, **art. 2(a)(iii)**

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